

REPORT OF THE
OFFICE OF THE AUDITOR GENERAL
TO THE
JOINT LEGISLATIVE AUDIT COMMITTEE

912

THE BOARD OF EQUALIZATION
HAS UNDERESTIMATED TRANSFERS TO THE
TRANSPORTATION PLANNING AND RESEARCH ACCOUNT
STATE TRANSPORTATION FUND

OCTOBER 1979



California Legislature

Joint Legislative Audit Committee

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October 11, 1979

912

The Honorable Speaker of the Assembly
The Honorable President pro Tempore of the Senate
The Honorable Members of the Senate and the
Assembly of the Legislature of California

Members of the Legislature:

Your Joint Legislative Audit Committee respectfully submits the Auditor General's report concerning errors made by the State Board of Equalization in computing the transfers to the Transportation Planning and Research (now Transportation Planning and Development) Account. The erroneous assumptions and other calculation errors made by the Board are discussed in the report.

The auditors are William M. Zimmerling, CPA, Supervising Auditor; Dore C. Tanner, CPA; Richard C. Tracy; Mary M. Quiett; and Enrique G. Farias.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard Robinson".
RICHARD ROBINSON
Assemblyman, 72nd District
Chairman, Joint Legislative
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SUMMARY

The Transportation Planning and Research (TP&R) Account in the State Transportation Fund was established to support mass transportation and transportation planning programs. This program receives funding through an annual transfer from the Retail Sales Tax Fund. This transfer is calculated by the State Board of Equalization with the concurrence of the Department of Finance. Because the board made inaccurate assumptions and failed to consider the effect of accounts receivable, the calculations have been incorrect. The transfers made for the period from July 1, 1973 through December 31, 1978 totaled \$71,222,239. Our calculations, however, show that the transfers should have totaled \$86,354,529 or \$15,132,290 more than was actually transferred.

To correct the calculations, we recommend that the board recalculate the transfers to the Transportation Planning and Research Account so that the State Controller may correct the deficient transfers for the period from July 1, 1973 through December 31, 1978. In addition, we recommend that the board ensure that future calculations are made using the most accurate information available.

INTRODUCTION

In response to a request by the Joint Legislative Audit Committee, the Office of the Auditor General conducted a review of the State Board of Equalization's calculations for the transfer of funds from the Retail Sales Tax Fund to the Transportation Planning and Research (TP&R) Account in the State Transportation Fund. This review was conducted under the authority vested in the Auditor General by Section 10527 of the Government Code.

This report identifies inaccuracies in the board's calculation of the transfers to the TP&R Account and provides more realistic data and assumptions which should be used in calculating the transfer.

Background

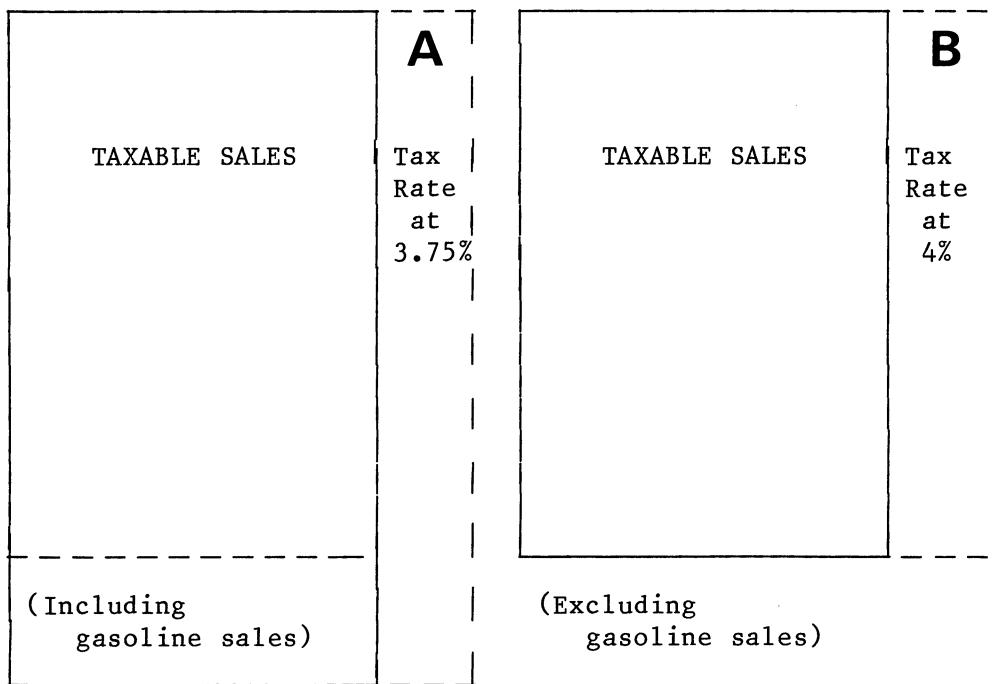
The TP&R Account was established to finance state operations and to support local assistance for mass transportation and transportation planning. Section 7102 of the Revenue and Taxation Code requires the State Board of Equalization to estimate the amount to be transferred for each year. This transfer was established beginning July 1, 1972 when gasoline sales first became subject to sales tax and when the State's share of sales tax was reduced from 4 percent to 3.75 percent.

To estimate the amount of this transfer, the board computes the difference between the two calculations below:

A = The sales tax revenue the State receives by including gasoline sales in the taxable sales base and by reducing the tax rate to 3.75 percent.

B = The sales tax revenue the State would have received if gasoline had not been subjected to sales tax and if the tax rate had remained at 4 percent.

These calculations can be graphically displayed as follows:



As an example, the figures below represent the board's determination of the TP&R transfer for 1977:

| | |
|----------------------------|------------------|
| Total Taxable Transactions | |
| Including Gasoline Sales | \$99,481,969,000 |

| | |
|----------|-----------------------------|
| Tax Rate | <u>.0375</u> |
| | <u>A = \$ 3,730,573,837</u> |

| | |
|----------------------------|------------------|
| Total Taxable Transactions | |
| Excluding Gasoline Sales | \$93,140,056,162 |

| | |
|----------|-----------------------------|
| Tax Rate | <u>.04</u> |
| | <u>B = \$ 3,725,602,246</u> |

| | |
|---------------------|--------------------|
| TP&R Transfer (A-B) | <u>\$4,971,591</u> |
|---------------------|--------------------|

Scope

Our review of the board's estimate of the TP&R transfer included an analysis of the transfer formula. In addition, we reviewed the various components of the formula, including gasoline gallonage, average price of gasoline, the federal usage factor, total taxable sales, accounts receivable adjustments, and taxable gasoline sales.

We reviewed the board's supporting documentation of the formula's various components for reasonableness. We also contacted other organizations to verify data or to obtain additional information.

Many components of the TP&R transfer formula are estimates, not exact figures. We examined the figures for taxable sales and for gallons of fuel to determine if they were used correctly in the formula.

In this review, we have focused upon the \$71,222,239 transferred from July 1, 1972 through December 31, 1978.

REVIEW RESULTS

THE TRANSPORTATION PLANNING AND RESEARCH ACCOUNT TRANSFERS WERE CALCULATED INCORRECTLY

The Transportation Planning and Research Account transfers were underestimated by \$15,132,290 for the period from July 1, 1973 to December 31, 1978. Because these transfers were underestimated, the State Transportation Fund was understated and the General Fund was overstated by \$15,132,290. Several inaccuracies in the board's calculation of the transfer amount caused the underestimation. The inaccuracies involved three components used in the calculation:

- Gallons of gasoline subject to sales tax;
- Accounts receivable adjustments; and
- Interest and penalties on accounts receivable.

Transfer Calculation

Section 7102 of the Revenue and Taxation Code requires the board to estimate the TP&R transfer, with the concurrence of the Department of Finance. Specifically, the law requires this calculation:

All revenues, less refunds, derived under this part at the 3 3/4 percent rates, including the imposition of sales and use taxes with respect to the sale, storage, use, or other consumption of motor vehicle fuel, which would not have been received if the sales and use tax rate had remained at 4 percent and Section 6357 had not been amended at the 1971 Regular Session of the Legislature, shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance, for each fiscal year....

In other words, the TP&R transfer is the difference between tax collected at 3.75 percent on all taxable sales less the tax which would have been collected at 4 percent on taxable sales excluding gasoline sales.

Prior to our review, the board had recognized that certain of its calculations were incorrect and it had begun making corrections. The board estimated that the transfers made for the period from July 1, 1973 through December 31, 1978 were underestimated by \$12,982,419. During our review, however, we calculated the underestimation for this period to be \$15,132,290 due to the three inaccuracies discussed below:

Inaccuracies in Estimating
the Gallons of Gasoline
Subject to Sales Tax

Because the board estimated the amount of gasoline usage inaccurately, it then underestimated the amount of the TP&R transfer.

To estimate taxable gasoline sales, the board determines the total number of gallons sold, then subtracts from this number the gallonage for refunds and aviation use to arrive at on-highway gallonage. The remaining number of gallons is then reduced by the gallonage sold to the Federal Government. The resulting figure, when multiplied by the average sales price, yields taxable gasoline sales. The following formula displays an estimate of taxable gasoline sales for 1978:

| | |
|---------------------------------------|----------------------|
| On-Highway Gallonage | 11,533,000,000 |
| Less Federal Exempt Gallonage (1.18%) | <u>- 136,000,000</u> |
| Taxable Gallonage | 11,397,000,000 |
| Average Sales Price Per Gallon | <u>x 63.6¢</u> |
| Taxable Gasoline Sales | \$ 7,248,000,000 |

In calculating taxable gasoline sales, the board failed to modify gallonage figures by audit adjustments for certain periods. The board's auditors, while auditing tax reports, sometimes determine that the gallons of gasoline are incorrectly reported. The gasoline gallonage figures the board developed failed to include all these audit adjustments. Consequently, the board's estimate did not include a total of approximately 5.5 million gallons for the months of January 1973, August 1977, and for October and November of 1978.

In addition, the board did not correctly calculate exempt federal gallonage. Gasoline used by the Federal Government is not subject to the state sales tax. Federal gallonage, therefore, must be subtracted from the total to yield the tax base subject to the TP&R calculation.

Since complete information about federal gallonage was unavailable, the board originally estimated federal usage at 4 percent of state consumption, an estimate obtained from an oil company representative. For 1978, the board revised its 4 percent factor to 1.18 percent to more accurately reflect federal gasoline consumption.

While the new estimate of federal gallonage is more accurate, we found data available that could further improve the accuracy of the estimate. We included military gasoline usage reported by the Department of Defense and refunds to the Federal Government. When we applied these federal use factors to determine yearly federal gasoline consumption in California, we found that from fiscal year 1972-73 to calendar year 1978, federal use levels ranged from 1.28 percent to 1.49 percent. The following table lists these percentages:

FEDERAL USAGE AS A PERCENTAGE
OF TOTAL STATE GASOLINE USAGE
1972-73 TO 1978

| <u>Year</u> | <u>Percent of State Usage</u> |
|-----------------------------|-----------------------------------|
| 1972-73 fiscal year | 1.39 |
| 1973-74 fiscal year | 1.49 |
| 1974-75 fiscal year | 1.40 |
| 1975 (3rd and 4th quarters) | 1.37 |
| 1976 calendar year | 1.36 |
| 1977 calendar year | 1.35 |
| 1978 calendar year | 1.28 |

Accounts Receivable

The board establishes accounts receivable when sales taxes are not paid at the time sales tax returns are filed or when an audit discloses an underpayment of taxes. From 1972 to 1977, the board did not include audit adjustments and other accounts receivable in determining total sales tax transactions. As a result, the board underestimated the tax base upon which the TP&R transfer is calculated. The board began including accounts receivable transactions in the calculation for the 1978 transfer.

Interest and Penalties
on Accounts Receivable

For 1978, the board reduced the TP&R transfer by \$685,263. This reduction was an attempt to estimate the additional interest and penalties on accounts receivable that would have accrued if the sales tax rate had not been reduced by .25 percent.

We believe that the reduction of \$685,263 is unwarranted. Section 7102 of the Revenue and Taxation Code states that the TP&R transfer is the difference between tax collected at 3.75 percent less the tax which would have been collected at 4 percent on sales, excluding gasoline. There is no statutory authority for reducing the transfer for interest and penalties.

Revised Calculation

After reviewing the board's method for determining the TP&R transfers, we recalculated the transfers using more accurate data and found that an additional \$15,132,290 should have been transferred to the TP&R Account in the State Transportation Fund for the period from July 1, 1973 through December 31, 1978. The chart below details the difference between the two calculations.

| | <u>Board of Equalization Calculation</u> | <u>Office of the Auditor General Calculation</u> | <u>Underestimation of TP&R Transfers</u> |
|-----------------|--|--|--|
| 7/1/72- 6/30/73 | \$ 0 | \$ 0 | \$ 0 |
| 7/1/73- 6/30/74 | 7,385,105 | 9,872,347 | 2,487,243 |
| 7/1/74- 6/30/75 | 24,196,592 | 27,260,434 | 3,063,842 |
| 7/1/75-12/31/75 | 13,331,367 | 14,862,629 | 1,531,262 |
| 1/1/76-12/31/76 | 19,652,819 | 23,681,469 | 4,028,650 |
| 1/1/77-12/31/77 | 4,971,591 | 8,416,136 | 3,444,545 |
| 1/1/78-12/31/78 | <u>1,684,765</u> | <u>2,261,514</u> | <u>576,749</u> |
| Total | <u>\$71,222,239</u> | <u>\$86,354,529</u> | <u>\$15,132,290</u> |

1979 Transportation Planning and Development Account Transfer

Section 7102 of the Revenue and Taxation Code, which requires the board's annual estimate of the transfer, was amended by Chapter 161 of the Statutes of 1979 (SB 620). This amendment specified that the transfer be calculated using the State's share of the sales tax at 5 percent and at 4.75 percent, rather than at the former rates of 4 percent and 3.75 percent. Chapter 161 also placed a maximum ceiling of \$110 million on the transfer for fiscal year 1979-80. This maximum is to be modified annually based on the consumer price index, state per capita income, and population of the State. Chapter 161 also renamed the account as the Transportation Planning and Development (TP&D) Account.

In calculating the TP&D Account transfer for the first half of 1979, the board used preliminary data since final data were not available. The board will adjust this preliminary TP&D transfer when final data are available. The board conducted this preliminary TP&D transfer to comply with Chapter 161 of the Statutes of 1979 which required a transfer before October 1, 1979.

We reviewed the board's method of calculating the 1979 TP&D transfer. Although we were unable to calculate the exempt federal gallonage for the first half of 1979 since data is not yet available, we did find that the board continues to include one inappropriate element in the calculation. The board reduced the TP&D transfer by \$303,106 for interest and penalties on accounts receivable which would have accrued had the sales tax rate not been reduced by .25 percent. When the board revises the 1979 TP&D transfer, it should adjust its calculations to eliminate this factor.

The Board May Make
Retroactive Transfers

The Legislative Counsel stated in an opinion dated September 26, 1979 that the board has discretion to revise its estimate of transfers to the TP&D Account. If the Department of Finance concurred in the revised estimate, the State

Controller would be required to make the transfer. The board, however, is not required to revise its original estimate. (The entire opinion appears in Appendix A.)

CONCLUSION

The Board of Equalization's calculations to determine transfers to the Transportation Planning and Research Account of the State Transportation Fund were underestimated by \$15,132,290 for the period from July 1, 1973 through December 31, 1978. These three factors caused this underestimation:

- Inaccuracies in determining gallons of gasoline subject to sales tax;
- Failure to include accounts receivable in determining total sales tax transactions; and
- Reduction of the 1978 transfer by interest and penalties on accounts receivable.

RECOMMENDATION

We recommend that the Board of Equalization, with the concurrence of the Department of Finance, direct the State Controller to transfer \$15,132,290 to the Transportation Planning and Development Account of the State Transportation Fund for the period from July 1, 1973 through December 31, 1978.

We further recommend that the board (1) use the most accurate information available to estimate federal gasoline usage, (2) include accounts receivable adjustments in determining total sales tax transactions, and (3) discontinue deducting interest and penalties on accounts receivable from the transfer estimate. These procedures will allow the board to more accurately estimate the amount which should be transferred to the Transportation Planning and Development Account.

OTHER PERTINENT INFORMATION

During our review, we conducted a limited test of the Board of Equalization's audit selection system. This review included an analysis of the selection process and a comparison between audit selection of service stations and selection of other types of businesses.

Cell System

A major objective of the Board of Equalization's audit selection system is to identify accounts which will result in productive audits, those which will generate the additional taxes to exceed the cost of performing the audit. To accomplish this identification, the board groups accounts that have not been audited in the past eight quarters or more as of July 1 of each year in categories called cells. A cell consists of accounts which have similar probabilities of audit productivity. An account is placed in a particular cell group based on its audit history and sales volume. Annually, the board examines each account's prior audit experience to determine whether that account should be grouped in a different cell.

Cells are ranked from 1, the most productive, to 16, the least productive, according to prior audit experience. For fiscal year 1978-79, service stations were ranked in cells

1, 7, 11, and 13.* Quotas for the number of audits within each cell are based on audit experience, average hours per audit, number of eligible accounts, and authorized staff.

Audit Selection and Guidelines

Audit priority is given to cells 1 through 6, the most productive. The board's audit staff must review each eligible account within these cells and decide whether to audit that account, waive the audit, or not audit that account. Cells 7 through 11 are moderately productive, while cells 12 through 16 are the least productive.

Once an account is selected for audit, the auditors may use general audit procedures which the board suggests. While some procedures have been developed, detailed steps on each audit are affected by the results of preliminary investigation of the records.

The board has developed general audit procedures which contain specific techniques applicable to audits of service stations. One of these, the mark-up technique, requires the auditor to segregate sales by type of merchandise (when possible) if the differences in mark-ups between types of merchandise appear to be significant.

*Service stations include gasoline stations and petroleum refineries operating gasoline stations.

Audit Selection is
Regularly Updated

Each account's probability of being selected for audit depends upon the cell in which the account is located. Since cells 1 through 6 have a higher probability of productivity, accounts within them are more likely to be audited.

Based upon past audit history and changes in sales volume, the board annually updates the cell designation of each account. For example, a service station with sales of \$1,000,000 would be classified in cell 5 in 1970 and 1971, in cell 7 in 1972, in cell 8 in fiscal year 1974-75, in cell 9 in fiscal year 1975-76, and in cell 7 in fiscal years 1976-77, 1977-78, and 1978-79.

Audits of Service Stations

We analyzed the audit activities by sales volume between service stations and other businesses in the following categories:

- Audit was completed in 1978-79;
- Audit was waived based upon a board determination that the audit would not be productive;
- No audit was completed in 1978-79.

We found audit coverage of service stations was similar to that of other businesses. As depicted in the table below, 62 percent of the sales volume of service stations eligible for audit within cell 1, the most productive cell, were audited, as compared with 68 percent of the sales volume of other businesses.

AUDIT COVERAGE BY SALES VOLUME

| <u>Category</u> | <u>Service Stations</u> | <u>Other Businesses</u> |
|---------------------|-------------------------|-------------------------|
| Audited | 62% | 68% |
| Waived | 7% | 1% |
| Audit not completed | <u>31%</u> | <u>31%</u> |
| Total | <u>100%</u> | <u>100%</u> |

Within the 31 percent of the service station audits not completed, the board has informed us that 66 percent of these accounts were either audited or waived by July 31, 1979, and another 11 percent were currently being audited.

Respectfully submitted,



THOMAS W. HAYES
Auditor General

Date: October 9, 1979

Staff: William M. Zimmerling, CPA, Supervising Auditor
Dore C. Tanner, CPA
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KENNETH CORY
Controller, Sacramento

DOUGLAS D. BELL
Executive Secretary

October 5, 1979

Mr. Thomas W. Hayes
Auditor General
925 L Street, Suite 750
Sacramento, California 95814

Dear Mr. Hayes:

A review of your report on

Review of Board of Equalization Methods
for Transfers to the Transportation
Planning and Research Account of the
State Transportation Fund

has been made, and we have discussed it with your staff who prepared it. We are pleased that you agree with our basic overall methodology used in making transfer estimates.

As you point out in your report, many of the components of the transfer formula are estimates and not exact figures. Also, since this program was initiated by law effective July 1, 1972, we have obtained new knowledges almost each year thereafter to improve prior-year estimating procedures. Your report is another example of how refinements can be made for future estimating. We have already incorporated your federal gasoline and accounts receivable recommendations in our estimating procedures. We also concur with your recommendation regarding interest and penalties on accounts receivable.

We would like to point out that each calculation of this transfer deals with an everchanging methodology which, in its latest and current version, does not necessarily mean that prior estimates are wrong. For example, if we suddenly found a one-cent overestimation of the average price of gasoline, a component in the transfer formula, it could be said that the Board overestimated transfers to the Transportation Planning and Research Account for one or more prior periods.

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Mr. Thomas W. Hayes
Auditor General

October 5, 1979

As to your recommendation to direct the State Controller to transfer \$15,132,290 to the Transportation Planning and Development Account of the State Transportation Fund from the Retail Sales Tax General Fund for the period July 1, 1973 to December 31, 1978, we need some time to further review the methodology used in all of the transfer formula components for the years involved and discuss the matter with the Department of Finance before responding to it.

Sincerely,



Douglas D. Bell
Executive Secretary

DDB:MS

cc: Honorable William M. Bennett
Honorable Richard Nevins
Honorable George R. Reilly
Honorable Ernest J. Dronenburg, Jr.
Honorable Kenneth Cory

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Mr. Thomas W. Hayes
Auditor General
925 L Street, Suite 750
Sacramento, CA 95814

Sales and Use Tax Revenues: Motor
Vehicle Fuel - #16788

Dear Mr. Hayes:

You have asked the following three questions, which are stated and considered below, regarding the transfer of state sales and use tax revenues to the Transportation Planning and Development Account in the State Transportation Fund.

QUESTION NO. 1

Is the State Board of Equalization, in the administration of Section 7102 of the Revenue and Taxation Code, required to recalculate its estimates for prior years to adjust any previous underestimates.

OPINION NO. 1

The State Board of Equalization, in the administration of Section 7102 of the Revenue and Taxation Code, is not required to recalculate its estimates of sales and use tax revenues to be transferred to the Transportation Planning and Development Account in the State Transportation Fund to adjust for any previous underestimates.

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CHRISTOPHER ZIRKLE

DEPUTIES

ANALYSIS NO. 1

The California Sales and Use Tax Law is contained in Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.¹

All fees, taxes, interest and penalties imposed under such provisions are collected by the State Board of Equalization, which transmits such payments to the State Treasurer to be deposited in the State Treasury to the credit of the Retail Sales Tax Fund (Sec. 7101, R.& T.C.).

Section 7102² requires the money in the Retail Sales Tax Fund, upon order of the State Controller, to be transferred in the manner specified therein.

Subdivision (a) of Section 7102 requires that a portion of the sales and use tax revenues on motor vehicle fuel be transferred to the Transportation Planning and Development Account in the State Transportation Fund³ and subdivision (b) of Section 7102 requires that the balance of such revenues be transferred to the General Fund.

Under subdivision (a) of Section 7102, the State Board of Equalization is required to estimate, with the concurrence of the Department of Finance, the amount of revenues to be transferred to the Transportation Planning and Development Account. The estimate of the amount to be transferred is the net amount equal to the increase in the sales and use tax revenues in the computation period resulting from imposing the tax at a 4-3/4 percent rate and on motor vehicle fuel instead of a 5 percent rate and not on motor vehicle fuel.⁴ Prior to enactment of Chapter 161 of the Statutes of 1979, the estimate was required to be made as soon as practicable after the close of each calendar year and the amount so estimated was required to be transferred to the Transportation Planning and Development Account pursuant to an order issued by the State Controller.

¹ All section references are contained in the Revenue and Taxation Code, unless otherwise indicated.

² Hereafter referred to as Section 7102.

³ Chapter 161 of the Statutes of 1979 (S.B. 620), an urgency statute which became effective June 28, 1979, changed the name of the account from the Transportation Planning and Research Account to the Transportation Planning and Development Account.

⁴ Prior to the enactment of Chapter 161 of the Statutes of 1979, the computation was made based on 3-3/4 percent and 4 percent rates.

We understand that the data upon which the transfer under Section 7102 is based is not complete at the time the calculations are required to be made and that the data does not provide a means for absolute accuracy in computing the amount to be transferred.

Further, the Legislature has consistently used the term "estimate" in the context of the calculations of the transfer under Section 7102 to the Transportation Planning and Development Account since the mandate was added by the provisions of Section 9.5 of Chapter 1400 of the Statutes of 1971.

The courts have construed the term "estimate" as a word which precludes accuracy, and one which means to calculate roughly or to form an opinion as to an amount from imperfect data (see Denniston and Partridge Company v. Mingus, 179 N.W. 2d 748, 752, 753; see also Indiana Gas & Water Co. v. Williams, 175 N.E. 2d 31, 33, 34; V. Mueller & Co. v. United States, 115 F. 2d 354, 362).

The use of the term, therefore, indicates legislative recognition of the imperfect data upon which the board must act and further indicates an intent of the Legislature to allow the State Board of Equalization a great deal of latitude in ascertaining the basis for the amount to be transferred under Section 7102.

Further, the Legislature has directed that the amounts computed pursuant to the estimate be made by a specified date.

Chapter 161 of the Statutes of 1979 amended Section 7102 to require that "... [c]ommencing with the estimate for the calendar quarter commencing July 1, 1979, the estimate shall be made, and the amount so estimated shall be transferred, each calendar quarter ..." to the account specified above (see Sec. 58, Ch. 161, Stats. 1979).

The Legislature's specificity as to the date set for the estimate and the lack of any statement mandating the revision of such estimate further indicates an intent of the Legislature to allow wide latitude for the board to meet the deadline established by the Legislature.

The fundamental rule of statutory construction is that the intent of the Legislature should be ascertained so as to effectuate the purpose of the law (Select Base Materials v. Board of Equal., 51 Cal. 2d 640, 645).

Thus, in our opinion the State Board of Equalization, in the administration of Section 7102 of the Revenue and Taxation Code, is not required to recalculate its estimates of sales and use tax revenues to be transferred to the Transportation Planning and Development Account in the State Transportation Fund to adjust for any previous underestimates.

QUESTION NO. 2

If the State Board of Equalization is not required to revise its estimates made pursuant to Section 7102 for prior years, is the State Board of Equalization prohibited from revising such estimates?

OPINION NO. 2

The State Board of Equalization is not prohibited from revising its estimates made pursuant to Section 7102 for prior years, but the revisions to the prior estimates are subject to the concurrence of the Department of Finance.

ANALYSIS NO. 2

As we indicated in Analysis No. 1, the Legislature has provided the State Board of Equalization with wide latitude in making the estimates required under Section 7102.

While there is no statutory mandate that the State Board of Equalization revise its estimates made under Section 7102, we think that the discretion invested by the Legislature in the State Board of Equalization to make the estimates would include the discretion to revise the estimates, and the courts would not interfere in such revision (see Morgan v. County of San Diego, 19 Cal. App. 3d 636, 640), in the absence of a showing that the board failed to consider relevant factors in its exercise of discretion (see In re Minnis, 7 Cal. 3d 636, 645).

However, the estimates of the State Board of Equalization are subject to the concurrence of the Department of Finance (see Sec. 7102, R. & T.C.).

Thus, the State Board of Equalization is not prohibited from revising its estimates made pursuant to Section 7102 for prior years, but the revisions to the prior estimates are subject to the concurrence of the Department of Finance.

QUESTION NO. 3

If the State Board of Equalization were to revise its estimates made for prior years under Section 7102, which would require the transfer of additional revenues to the Transportation Planning and Development Account, and the Department of Finance concurred in such revised estimate, would the State Controller be required to make such transfer?

OPINION NO. 3

If the State Board of Equalization were to revise its estimate made for prior years under Section 7102 which would require the transfer of additional revenues to the Transportation Planning and Development Account, and the Department of Finance concurred in such revised estimate, the State Controller would be required to make such transfer.

ANALYSIS NO. 3

As we have indicated in Analysis No. 2, the State Board of Equalization has discretion to revise its estimates if the revision is concurred in by the Department of Finance.

On the other hand, the State Controller's order which transfers the amount from the Retail Sales Tax Fund to the Transportation Planning and Development Account is a ministerial act in which the State Controller has no discretion (see Riley v. Johnson, 219 Cal. 513, 521-522; Drummey v. State Bd. of Funeral Directors, 13 Cal. 2d 75, 83). The State Controller is required to transfer the amount estimated by the State Board of Equalization if such estimate has been concurred in by the Department of Finance.

Thus, if the State Board of Equalization were to revise its estimate made for prior years under Section 7102 which would require the transfer of additional revenues to the Transportation Planning and Development Account, and the Department of Finance concurred in such revised estimate, the State Controller would be required to make such transfer.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By *Charles C. Asbill*
Charles C. Asbill
Deputy Legislative Counsel

CCA:kh

cc: Honorable Richard Robinson, Chairman
Joint Legislative Audit Committee

cc: Members of the Legislature
Office of the Governor
Office of the Lieutenant Governor
Secretary of State
State Controller
State Treasurer
Legislative Analyst
Director of Finance
Assembly Office of Research
Senate Office of Research
Assembly Majority/Minority Consultants
Senate Majority/Minority Consultants
California State Department Heads
Capitol Press Corps